Goh Hock Guan & Associates v Kanzen Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-22-556 OF 1993
KAMALANATHAN RATNAM J
10 AUGUST 1998

Contract *— Quantum meruit — Joint venture — Claim for professional fees based on a quantum meruit basis — Whether there was joint venture agreement between parties which was subsequently aborted — Whether claim for professional fees ought to be allowed*

Tort *— Detinue — Wrongful withholding of passport — Claim for damages — Whether claim ought to be made by owner of passport — Whether claim was remote*

The defendant had invited the plaintiff to take part in the development of Jiangyin City. In pursuance thereto, the plaintiff prepared the conceptual development plans of the city as requested by the defendant. The plaintiff contended that the defendant had retained the international passport of one of the plaintiff's representative ('PW3'), thus he was unable to make a trip to Jiangyin City as planned. As a result, it was alleged, the deal was aborted. The plaintiff claimed for professional fees amounting to US$600,000 based on a quantum meruit basis and for damages in the sum of US$550,000 for wrongfully retaining the international passport belonging to PW3.

The defendant contended that this was a pure and simple joint venture adventure on the part of the parties and, since nothing materialized, the defendant owed the plaintiff nothing. The defendant counterclaimed for general damages on the basis that the wrongful allegation by the plaintiff had caused loss in reputation to the defendant.

Held, judgment for the plaintiff for RM100,000 and dismissing the counterclaim:

(1) The counterclaim totally lacked particulars and was so wide and vague as to be incapable of maintaining a cause of action (see p 390E–F).

(2) Both parties had agreed to a joint venture to prepare the master plan to guide the development of Jiangyin City. The parties had agreed to RM100,000 as being the total amount to be set aside for the plaintiff if the joint venture failed. Since the venture had indeed failed and since PW3 was unable to make a trip to Jiangyin City due to no fault of his, the plaintiff was entitled to the agreed RM100,000 to cover the expenses and as a nominal fee. The claim for the proposed fee of US$600,000 — which would only be due if only the venture was successful — was rejected (see pp 392D–I and 393A–D).

(3) The claim for withholding the passport was rejected. Such claim ought to be made by PW3 who was the owner of the passport. Furthermore, the plaintiff's claim for damages was remote and being special damages, the claim ought to have been specifically pleaded and proved (see p 393F–I).

[Bahasa Malaysia summary

Defendan telah menjemput plaintif untuk mengambil bahagian dalam pembangunan Jiangyin City. Susulan daripadanya, plaintif telah menyediakan pelan-pelan pemajuan konsepsi bandar raya tersebut seperti yang diminta oleh defendan. Plaintif menghujahkan bahawa defendan telah menyimpan pasport antarabangsa salah seorang daripada wakil plaintif ('PW3'), justeru itu ia tidak dapat membuat lawatan ke Jiangyin City seperti yang dirancang. Akibatnya, ia dikatakan, urus janji itu terbantut. Plaintif menuntut yuran profesional sebanyak AS$600,000 berasaskan dasar quantum meruit dan untuk ganti rugi dalam jumlah AS$550,000 kerana dengan salahnya menyimpan pasport antarabangsa kepunyaan PW3.

Defendan menghujahkan bahawa ini merupakan suatu usahasama yang jelas dan mudah semata-mata di antara pihak-pihak dan, oleh kerana tiada apa-apa menjadi kenyataan, defendan tidak terhutang apa-apa kepada plaintif. Defendan menuntut balas untuk ganti rugi atas dasar bahawa pengataan yang salah oleh plaintif telah menyebabkan kehilangan reputasi kepada defendan.

Diputuskan, penghakiman untuk plaintif sebanyak RM100,000 dan menolak tuntutan balas:

(1) Tuntutan balas kekurangan butir-butir pada keseluruhannya dan adalah begitu luas dan tidak jelas hinggakan tidak mampu mengekalkan kausa tindakan (lihat ms 390E–F).

(2) Kedua-dua pihak telah bersetuju kepada usahasama untuk menyediakan pelan induk bagi membimbing pembangunan Jiangyin City. Pihak-pihak telah bersetuju kepada RM100,000 sebagai amaun keseluruhan untuk diketepikan oleh plaintif sekiranya usahasama gagal. Oleh kerana usahasama tersebut memang telah gagal dan memandangkan PW3 tidak dapat membuat lawatan ke Jiangyin City disebabkan keadaan di luar kawalannya, plaintif berhak mendapatkan RM100,000 yang disetujui bagi meliputi pembelanjaan dan sebagai yuran nominal. Tuntutan untuk yuran AS$600,000 yang dicadangkan — yang hanya harus dibayar sekiranya usahasama tersebut berjaya — telah ditolak (lihat ms 392B–I dan 393A–D).

(3) Tuntutan untuk menahan pasport itu ditolak. Tuntutan demikian sepatutnya dibuat oleh PW3 yang merupakan pemilik pasport. Seterusnya, tuntutan plaintif untuk ganti rugi adalah terpencil dan sebagai ganti rugi khas, tuntutan itu sepatutnya diplidkan dan dibuktikan secara khusus (lihat ms 393F–I).]

Notes

For cases on detinue, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 262–269.

Chin Yew Meng (*Jennifer Chandran* with him) (*Allen & Gledhill*) for the plaintiff.

Alvin Loo (*Mohd Norhisyam bin Mohd Yusof* with him) (*Aznan Jaya & Co*) for the defendant.

Cur Adv Vult

Kamalanathan Ratnam J: The Government of Jiangyin under the Peoples' Republic of China invited the defendant to develop the City of Jiangyin. The defendant's Chief Executive Officer, Lim Kim Hong ('Lim'), visited Jiangyin in or around October 1992. As a result of the said visit, the Government of Jiangyin appointed Lim as the Economic Adviser of Jiangyin City.

Lim then decided to invite Malaysian citizens, amongst others, to invest in Jiangyin City to jointly develop it. With this in mind, Lim contacted and invited the plaintiff to take part in the said development. The plaintiff informed the defendant that in order to develop Jiangyin City and to prepare the conceptual development plans of the said city, it would be beneficial for the plaintiff's representative to visit Jiangyin City. Between 4 November 1992 to 8 November 1992, three representatives of the plaintiff including one Goh Hock Guan ('Goh') and two representatives of the defendant including Lim, visited Jiangyin City.

As a result of the said visit, a meeting was held on 18 November 1992 at the plaintiff's office whereby both parties discussed their trip to Jiangyin City and how they were to develop it and the best way to invest in it. The plaintiff's representatives' expenses to Jiangyin City were met by the defendant.

Case for the plaintiff

The plaintiff contends that having visited Jiangyin City, it drew up a conceptual master plan and the architectural sketch plans and made a presentation to the defendant on 5 December 1992 at the plaintiff's office. This was to enable the sets to be ready for presentation to the Chinese officials on the next trip which was scheduled between 16 December 1992 to 23 December 1992. There was to be a memorandum of understanding ('MOU') to be signed by the parties but it did not materialise. The plaintiff contends that Goh ('PW3') had given his passport to one Monica of the defendant on 5 December 1992 to enable her to obtain a visa on his behalf. However, the plaintiff contends that Lim had rung the plaintiff and wanted the plans and drawings and that he had indicated that if the plans were not given to him the defendant would retain Goh's international passport. The plaintiff now alleges that Goh's passport was indeed retained and that he was therefore unable to make the trip to Jiangyin City. The

deal was finally aborted and the plaintiff now claims for professional fees due based on a quantum meruit basis and for damages for wrongfully retaining the international passport belonging to Goh.

Case for the defence

The defendant contends that there was neither any memorandum of understanding nor any agreement signed to enable the plaintiff to claim on a quantum meruit basis. The defendant contends that this was a pure and simple joint venture adventure on the part of the parties and since nothing materialised the defendant owes the plaintiff nothing. The defendant also argued that there was no nexus between the plaintiff and Goh for the plaintiff to claim damages for the alleged wrongful retention, if any, of Goh's international passport. The defendant also counterclaimed for general damages on the basis that such wrongful allegation by the plaintiff against the defendant, had caused loss in reputation to the shareholders of the defendant which cannot be satisfied by mere awarding of costs. The defendant also contended that this action against the defendant had caused it negative effects and thus it had sustained much loss.

Court's findings

Counterclaim

At the outset, I must say that the counterclaim totally lacks particulars and is so wide and vague as to be incapable of maintaining a cause of action. Perhaps it is with this realism that the defendant did not even make a submission on its counterclaim. The same is therefore dismissed with costs.

The plaintiff's claim for damages

Whilst the plaintiff contends that it was the defendant who invited the plaintiff to go to Jiangyin City on the first occasion before the conceptual plans and sketches were drawn, I find that on a balance of probabilities it was the plaintiff who must have suggested that it visit the city to be able to draw up the plans. It is only logical that this suggestion must come from the plaintiff. During case management, parties had by consent agreed and admitted to the contents of various documents into a common agreed bundle of documents ('CABD'). These documents included minutes of the various meeting held between the plaintiff's and defendant's representative. The first meeting held on 23 October 1992 (which minutes were not included in the CABD) was merely to invite the plaintiff to join in the venture. After the meeting, the plaintiff prepared an MOU but it was not signed by the parties. There was in this draft absolutely no mention of any professional fees. The first draft was sent to the defendant with a covering letter dated 27 October 1992. This MOU was to have been signed by three parties, namely the Peoples' Government of Jiangyin City, the plaintiff and the defendant. It was agreed in draft that the three parties

would form a consortium to prepare a development plan/master plan to guide the development.

Subsequently on 31 October 1992, a further meeting was held at the plaintiff's office to discuss the terms of the said MOU. Unfortunately, these minutes were not included in the CABD and the court cannot therefore take cognizance of it.

In any case, it is not in dispute that upon the defendant paying all the expenses the representatives of both parties visited Jiangyin City between 4 November 1992 and 8 November 1992.

Upon their return, the parties had another meeting on 18 November 1992 to discuss the trip. The minutes of this meeting, prepared by the plaintiff is in the CABD. There was a clear expression of intention of the parties that 'development of Jiangyin City could take the form of a joint venture with the city to form a development corporation'. The development corporation will manage the development of the sites identified and the equity for the development corporation would be 30:70 (Jiangyin and Kanzen and Goh Hock Guan & Associates respectively). It is apparent that both parties fully and frankly discussed the project as a joint venture basis.

Subsequently, a further meeting was held on 24 November 1992 at the request of the plaintiff to conclude an MOU sent to the defendant. Again the notes of this meeting were prepared by the plaintiff and are included in the CABD. It is plain that whilst it was earlier agreed that the defendant would only pay for all of the plaintiff's expenses and that the plaintiff would only charge paper cost, if the venture was unsuccessful, the plaintiff now held a different view and wanted the defendant to pay an initial fee of RM1m and a monthly payment of US$20,000 followed by a payment of US$500,000 after the plans were approved by Jiangyin City. At this meeting PW1, Lai Chu , a senior architect of the plaintiff, having confirmed that he had the authority to speak on behalf of the plaintiff agreed 'in the spirit of working as a team to ensure that eventual success of this China Joint Venture', to RM100,000 to cover the plaintiff's expense and as a nominal fee, if the venture failed, after the next trip. In the event the venture was successful, a fee proposal of:

(a) Initial payment of	US$40,000
(b) Monthly payment of US$20,000 effective December 1992 to February 1993, ie a total of	US$60,000
(c) After approval by Jiangyin City	US$500,000
Total fees	US$6000,000 (or RM1.5m)

was made. On this basis, the plaintiff agreed to present the conceptual master plan and the architectural sketch plans on 5 December 1992. This fee proposal was agreed to by PW1 and in return he confirmed that the

professional fees payable to the plaintiff would be in line with the scale fees as laid down by the Architects' Institute of Malaysia. A

It is the case of the plaintiff that it did not agree to any joint venture. I cannot accept this submission. Time and again the courts have emphasized the need to look to the intention of the parties when construing a contract. The label attached to a document cannot conclude its legal effect. The B court will have to look into the terms discussed and arrived at to ascertain the intention of the parties. It is the substance and not the form that decides if there was an effective agreement even though it may be labelled an MOU.

It was decided at the meeting held on 24 November 1992 that if the C Chinese authorities failed to sign the MOU which was expected to be performed on their next scheduled trip to Jiangyin City between 16 December 1992 to 23 December 1992, the defendant would back off from the deal and write off the loss.

I have no hestitation in concluding that both parties had agreed to a joint venture. By this joint venture, the plaintiff was to prepare the master D plan to guide the development of Jiangyin City and its surrounding region and to consider all aspects of tourism, hotel development, commercial development, housing, infrastructure and everything necessary to convert Jiangyin City into a prosperous city. I also find that the said master plan was to be in two stages. First, the conceptual stage and, second, the E detailed master plan stage. After the conceptual stage, a presentation was to be made to Jiangyin City. Once accepted the defendant was, pursuant to the minutes of the meeting held on 24 November 1992, to negotiate with Jiangyin City for the purchase of the area of land identified for the river front project, Huang San tourist development, industrial park development and golf course resort development. F

It was in respect of the first stage that the parties had agreed to RM100,000 as being the total amount to be set aside for the plaintiff to cover its expenses and nominal fees if the joint venture failed and produced no result. The defendant however argues that the plaintiff is not even entitled to this sum because the said sum was only due and payable if the G said joint venture failed after the next trip which had been scheduled between 16 December 1992 to 23 December 1992 (as stated in the minutes of the meeting held on 24 November 1992). The defendant contends that this sum was payable contingent upon the joint venture having failed after the plaintiff had undertaken the trip which was scheduled between 16 December 1992 to 23 December 1992 and having made a H presentation to the Peoples' Republic of Jiangyin City. The defendant argued that the plaintiff did not undertake the trip as scheduled and thus aborted the joint venture on 8 December 1992.

The plaintiff says that PW3 (Goh) was unable to go to Jiangyin City because the defendant rang up the plaintiff and wanted the plans and I drawings and indicated that if the plans were not given to him PW3's international passport would be retained by the defendant. It is not in

dispute that Goh handed to Monica of the defendant his international passport and that it was with the defendant between 5 to 10 December 1992. The defendant contends that Goh's passport was actually lost or misplaced and was found and returned to him on 10 December 1992.

On this issue, I have no hestitation in finding that since the passport was in the possession of the defendant and since the defendant had admitted to misplacing the passport and only finding it and returning it on 10 December 1992 there was no way Goh could have made his way to Jiangyin City to explain the conceptual plans to the Chinese authorities. In any case, since the venture had indeed failed there was no doubt in my mind that the plaintiff is entitled to the agreed RM100,00 to cover the expenses and as the nominal fee of the plaintiff.

I reject outright the claim of the plaintiff for the sum of US$600,000. The joint venture did not at all take off. The fee proposal which envisaged the payment of US$600,000 would have been due if only the venture was successful. The joint venture was to have been signed by all parties. No evidence was led by the plaintiff, having the onus of proof, to show that in any event both the plaintiff and the Peoples' Republic of Jiangyin City would have signed the joint venture memorandum.

The claim based on quantum meruit is allowed in so far as the agreed sum of RM100,000.

The claim for damages for withholding passport

It is unfortunate that Goh did not sue on his own behalf. A passport is the property of its owner. No one has a right to a claim for withholding that passport, save and except the owner. But Goh Hock Guan was never a plaintiff to this action. Further this claim for damages is so remote that it baffles imagination. The plaintiff claims a sum of US$550,000 in respect of loss of earnings in the Philippines and Vietnam arising out of Goh not being able to proceed to those two countries. There is no evidence that he was given any such contracts by the leaders of those two countries. If he was to meet Mr Ramos, the president of the Philippines, for the purpose of being engaged to prepare master plans, surely such documentary evidence or even a letter from the Philippines Embassy could have been produced. Similarly, with any possible deals with Vietnam. PW3 merely 'plucked a figure from the air' when he asked for US$550,000 based on his previous professional visits to the said countries. Unfortunately, no evidence was led on this. There is one other factor to consider. Whilst in the statement of claim the plaintiff has prayed for general damages for being kept out of the use of the passport, PW3 was able to give evidence and asked for RM550,000. This being special damages, this claim ought to have been specifically pleaded and proved. The plaintiff had already sought one amendment of the claim on 23 July 1997. Surely, if it was serious with this claim for US$550,000, the plea of general damages ought to have been amended to include this item as special damages. It is my judgment that this claim must fail.

There will therefore be judgment for the plaintiff in the sum of RM100,000 with interest at 8% on the said sum from 16 December 1992 (when he ought to have been in Jiangyin City) to date of judgment and costs. The defendant's counterclaim is dismissed with costs.

Plaintiff's claim partially allowed; defendant's counterclaim dismissed with costs.

Reported by Loo Lai Mee